The ruling you have requested has been amended as a result of litigation and has been attached to this document.

December 28, 1999

Ms. Lorna R. Jones
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-3796

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130186.

The Harris County Hospital District (the "district") received a request for all quality of care complaints filed against Ben Taub General Hospital and Lyndon B. Johnson General Hospital during a specific three year period. You state that the district will release the statistical complaint data that has been compiled on the two hospitals. You assert that the remaining responsive information is made confidential by various statutes and the common-law right to privacy and is, therefore, excepted from required public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. We have considered your arguments and have reviewed the submitted sample documents.[1]

You initially argue that most of the responsive medical grievances are confidential under section 241.152 of the Health and Safety Code. Section 241.152(a) and (b) provide as follows:

(a) Except as authorized by Section 241.153, a hospital or an agent

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[1]We assume that the "sample" records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.
>
> (b) A disclosure authorization to a hospital is valid only if it:
>
> (1) is in writing;
>
> (2) is dated and signed by the patient or the patient's legally authorized representative;
>
> (3) identifies the information to be disclosed; and
>
> (4) identifies the person or entity to whom the information is to be disclosed.

Section 241.153(1) provides that directory information about a patient may be disclosed to the public unless the patient "has instructed the hospital not to make the disclosure." Section 241.151(1) defines directory information to include information disclosing the presence of a person receiving outpatient services from a hospital, the nature of the person's injury, the persons municipality of residence, sex, age, and general health status described in terms such as "fair" and "good."

You argue that once the patient ceases receiving services from the hospital, all information relating to the patient, including directory information, becomes health care information that is protected from disclosure by section 241.152(a). You appear to base this argument on the use of the word "presence" in the definition of "directory information," and on your interpretation of the applicable legislative history.[2] Our review of the legislative history suggests that the legislature understood that directory information is distinguishable from health care information and open to the public. Furthermore, there is nothing in the legislative history to suggest that directory information should be withheld from disclosure once the patient is discharged from the hospital. Thus, we conclude that most of the requested information submitted in Folder 1 is protected by section 241.152, and must not be released to the public. The district must, however, release directory information from these documents in accordance with section 241.151.[3]

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[2]The bill central to the district's legislative history argument is Senate Bill 975, Act of May 16, 1997, 75th Leg., R.S., ch. 498, 1997 Tex. Gen. Laws 1828.

[3]Because we are able to make a determination under section 241.152, we need not address your additional arguments against disclosure.

We note that the district has also submitted, as Folder 2, documents which it characterizes as "quasi-quality care issue" complaints. We agree with your assessment that these documents do not significantly reveal the patients' diagnosis, treatment, and prognosis so as to trigger the protections of section 241.152(a). Thus, we will address your additional arguments against disclosure for these complaints.

We note that some of the documents contained in Folder 2 are medical records that are protected from disclosure under the Medical Practice Act (the "MPA"). The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Occ. Code § 159.002(b); *see* Open Records Decision No. 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked the documents that may only be released as provided by the MPA. Open Records Decision No. 598 (1991); *see* Occ. Code § § 159.002(c), 159.004, 159.005.

You assert that the remaining documents submitted in Folder 2 are confidential materials created by a medical or peer review committee. Section 160.007 of the Occupational Code states that, "[e]xcept as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged." Section 161.032(a) of the Health and Safety Code provides that "records and proceedings of a medical committee are confidential." However, neither section 160.007 nor section 161.032 make confidential "records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, or extended care facility." Health & Safety Code § 161.032(b); *see Memorial Hosp.-the Woodlands v. McCown,* 927 S.W.2d 1, 10 (Tex. 1996) (stating that reference to statutory predecessor to section 160.007 in section 161.032 is clear signal that records should accorded same treatment under both statutes in determining if they were made in regular course of business).

In *Barnes v. Whittington,* 751 S.W.2d 493, 496 (Tex. 1988), the Texas Supreme Court indicated that "routinely accumulated information" unless submitted or created in connection with a committee's deliberative process, does not constitute confidential committee records. In *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.,* 701 S.W.2d 644, 648 (Tex. 1985), the court stated that records "gratuitously submitted to a committee or which have been created without committee impetus and purpose are not protected."[4] *See Memorial Hosp.-the Woodlands v. McCown,* 927 S.W.2d 1 at 9-10 (discussing business records and holdings in *Barnes* and *Jordan*). Thus, even if records are submitted to or created by a

[4] *Barnes* and *Jordan* both relied upon the predecessor statute to section 161.032 of the Health & Safety Code, section 3 of article 447d, Vernon's Texas Civil Statutes, which provided, in part, that "records made or maintained in the regular course of business" were not confidential.

medical peer review or medical committee, the records are not generally confidential if made or maintained in the regular course of business. Health & Safety Code § 161.032(b).

We have reviewed the complaints at issue and your explanation of the Performance Improvement Committee's function. It appears that these complaints are made during the regular course of hospital business, and not at the impetus of the Performance Improvement Committee. Consequently, we do not believe that these records are protected under either section 160.007 or section 162.032.

You also assert that the information in Folder 2 is protected from disclosure under common-law privacy as encompassed by section 552.101. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). We have reviewed the documents at issue, and conclude that, based on the types of illness, treatment, and symptoms revealed, these complaint files must be de-identified to protect these patients' privacy interests. Consequently, except for medical records and the patients' identities, the remaining information contained in the "quasi-quality care issue" complaint files must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

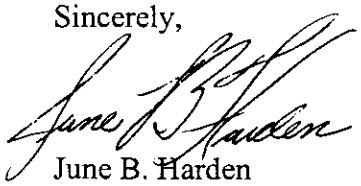
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 130186

Encl. Marked documents

cc: Mr. Daniel Raziq
Producer
KHOU-TV Channel 11
P. O. Box 11
Houston, Texas 77001-0011
(w/o enclosures)

CAUSE NO. GN000168

HARRIS COUNTY HOSPITAL DISTRICT, Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	53RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff Harris County Hospital District, and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, KHOU-TV, was sent reasonable notice, or notice was attempted, of this setting and of the parties' agreement that Harris County Hospital District must withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

FILED
03 NOV 24 AM 8:19
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

1. The information at issue, complaints regarding quality of care for the referenced years that contain health care information of patients in certain referenced hospitals, including directory information, is confidential under Health & Safety Code § 241.152(a) and, therefore, is excepted from disclosure by Tex. Gov't Code § 552.101. This determination is limited to the precise information responsive to the request for information which is the subject of this lawsuit;

2. The District shall withhold from the requestor complaints regarding quality of care for the referenced years and the referenced hospitals that contain health care information of patients, including directory information.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 24 day of November, 2003.

PRESIDING JUDGE

APPROVED:

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